



June 15, 2004

Donald S. Clark  
Secretary  
Federal Trade Commission  
Office of the Secretary  
Room H-159 (Annex J)  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20850

Re: FACTA Identity Theft Rule, Matter No. R411011

Dear Mr. Clark:

The American Financial Services Association (“AFSA”) appreciates the opportunity to comment on the Proposed Rule defining the terms “identity theft” and “identity theft report” in FCRA § 603(q).<sup>1</sup> AFSA is the national trade association for approximately 400 companies primarily engaged in the business of providing consumer credit. These companies include some of the nation’s largest diversified financial service providers. The credit products offered by AFSA’s members include personal loans, first and second mortgage loans, home equity lines of credit, credit card accounts, retail sales financing and credit insurance.

Because AFSA’s members rely upon the accuracy and completeness of the consumer report information provided by consumer reporting agencies (“CRAs”), AFSA is vitally interested in the Commission’s rulemaking process to implement the Fair and Accurate Credit Transactions Act (“FACTA”) amendments to the Fair Credit Reporting Act (“FCRA”). In addition, as users of consumer reports and furnishers of consumer report information, AFSA’s members are subject to the FCRA. For these reasons, the Final Rule defining identity theft and identity theft reports will directly impact AFSA’s members.

### **Introductory Comments**

AFSA appreciates the Commission’s effort to carefully balance the important considerations underlying the FACTA identity theft provisions. The definitions of identity theft and identity theft report are critical to the effectiveness of the FACTA amendments that are intended to address the risk of consumer identity theft and to

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<sup>1</sup> See 15 U.S.C. § 1681a(q)(3)-(4). These definitions were added by section 111 of the Fair and Accurate Credit Transactions Act, 2003 (“FACTA”), Pub. L. No. 108-159, 117 Stat. 1952 (Dec. 4, 2003).

mitigate its effects, once it occurs. At the same time, as the Commission recognizes in its Supplementary Information accompanying the Proposed Rule, identity theft reports “could provide a powerful tool for misuse, allowing persons to engage in illegal activities in an effort to remove or block accurate, but negative, information from their consumer reports.”<sup>2</sup> AFSA is concerned that the Proposed Rule has not fully addressed this risk identified by the Commission and that, as written, the Rule may allow the unscrupulous to turn a system intended to protect consumers into a system that could be easily used to deceive and defraud creditors and other users of consumer report information.

As explained more fully below AFSA proposes the following revisions to the Proposed Rule:

- **The words “or attempted” should be deleted from the definition of “identity theft” in section 603.2(a).**
- **Unauthorized use of a credit card that does not involve an account takeover should not be considered “identity theft”.**
- **The definition of “identifying information” should be narrowed.**
- **The “specificity” requirement in section 603.3(a)(1), and the illustrative examples, should be revised to prevent misuse of identity theft reports.**
- **The “valid law enforcement report” provisions in section 603.3(a) should be revised to avoid the potential for misuse of reports that are not authentic.**
- **The illustrative examples should be revised to make clear when a furnisher may request additional information to verify the validity of an official law enforcement report.**
- **The Final Rule should provide furnishers with broader authority to request additional information or documentation to prevent misuse of identity theft reports.**

AFSA appreciates the opportunity to comment on the Commission’s Proposed Rule.

**1. The Words “Or Attempted” Should Be Deleted from the Definition of “Identity Theft” in Section 603.2(a).**

AFSA’s members will be required to undertake significant measures to comply with the Proposed Rule’s fraud alert and information blocking provisions, and as such, AFSA is vitally interested in the Proposed Rule’s definition of “identity theft.”

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<sup>2</sup> 69 Fed. Reg. 23,371.

Under section 111, FACTA permits the Commission to further define the term “identity theft.”<sup>3</sup> The Commission, in the Proposed Rule, stated “the definition should be sufficiently broad to cover all bona fide victims and conduct, but should be tailored to prevent individuals who are not identity theft victims from using the Act for unscrupulous purposes such as clearly negative, but legitimate, information from their credit reports.” AFSA commends the Commission for its attempt to define “identity theft,” however, AFSA is concerned that the Proposed Rule’s broad definition will result in exactly what the Commission seeks to prevent: a marked increase in the inaccurate or fraudulent reporting of identity theft.

Specifically, AFSA is concerned about the Commission’s inclusion of attempted fraud as part of the broader definition of “identity theft.” The Commission proposes defining “identity theft” as “a fraud committed or attempted.”<sup>4</sup> AFSA believes the additional costs of expanding the definition of identity theft beyond the traditional notion of an individual opening an account or obtaining a loan in another person’s name outweighs any resulting benefits. If a fraud is attempted but not completed, the creditor’s fraud detection system will have averted identity theft and the consumer will suffer little, if any, harm. Any harm the consumer suffers can be, or more likely will already have been, adequately addressed. AFSA urges the Commission to revise the definition of “identity theft” by deleting any reference to attempted fraud.

The Supplementary Information suggests two reasons for the expansion of the definition of identity theft to include attempted fraud. AFSA believes that existing law already addresses both of the Commission’s concerns. The Supplementary Information notes that a consumer’s credit score may be lowered if a credit report inquiry is made as a result of an attempted fraud.<sup>5</sup> The existing FCRA already addresses this issue. If a consumer becomes aware that a credit report inquiry was made as a result of an attempted fraud, FCRA § 611 permits the consumer to dispute the accuracy of this inquiry with a CRA. In addition to a number of other obligations, the CRA is then required to conduct a reinvestigation into the accuracy of the disputed information or must simply delete it.<sup>6</sup> Because this protection is already available to the consumer, AFSA submits that the Commission’s expansion of the definition of identity theft to include attempted fraud is unnecessary to permit the consumer to remove an inquiry from his or her credit report file that resulted from an attempted fraud.

The Supplementary Information also indicates that a consumer who is aware of an attempted fraud may wish to place an initial fraud alert on his or her credit report file.<sup>7</sup> The provisions governing an initial fraud alert are already sufficiently broad to allow the consumer to obtain such an alert without modifying the definition of “identity theft” to include attempted fraud. To obtain an initial fraud alert, a consumer need only be able to

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<sup>3</sup> FCRA § 603(q)(3); 15 U.S.C. § 1681a(q)(3).

<sup>4</sup> Proposed Rule § 603.2 (a)

<sup>5</sup> 69 Fed. Reg. at 23,371.

<sup>6</sup> FCRA § 611(a)(1)(A).

<sup>7</sup> 69 Fed. Reg. at 23,371.

assert a good faith “suspicion that the consumer ... is about to become a victim of fraud.”<sup>8</sup> A consumer who is aware of an attempted fraud using his or her identifying information would clearly be able to assert a good faith suspicion that he or she is about to become a victim of identity theft. As a result, such a consumer would be able to place an initial fraud alert in his or her credit report file.

AFSA submits that the Proposed Rule’s expansive definition of “identity theft,” combined with the limited quality controls placed on identity theft reports is likely to lead to the submission of a significant number of false or misleading reports that CRAs and furnishers will have to investigate. The resources spent on these investigations could be more effectively used to pursue true identity theft and to protect consumers who are actually harmed by financial crimes.

## **2. Unauthorized Use of a Credit Card that Does Not Involve an Account Takeover Should Not Be Considered Identity Theft.**

AFSA is also concerned that the definition of “identity theft” would capture instances of unauthorized credit card use not traditionally considered identity theft. We agree that instances of “account takeover,” where a criminal re-routes a consumer’s credit card and billing information to a different address, constitutes identity theft. However, including traditional credit card fraud in the definition of “identity theft” may significantly increase claims of identity theft, fraud alerts and requests to block information as to individual transactions, rather than entire tradelines, which are already covered by the Truth in Lending Act dispute provisions.

For example, if a child used his or her parent’s credit card to purchase goods that the parent has not authorized or does not want to pay for, the parent should not be able to claim that this act constituted “identity theft,” thereby allowing the parent to, among other things, place an extended fraud alert on their credit report. If the activity was unauthorized, the parent could of course negotiate specific reporting changes with the furnisher or CRA with respect to the affected tradeline. Consumers are also protected from the unauthorized use of a credit card by the liability limitations in Regulation Z and company-specific rules.

We strongly urge the Commission to limit the definition of “identity theft” to more traditional instances of identity theft such as fraudulent account opening and account takeover. Further proliferation of fraud alerts can only dilute their effect on users of credit reports and the actions that they take in response to these alerts.

## **3. The Definition of “Identifying Information” Should Be Narrowed.**

AFSA strongly urges the Commission to clarify that the definition of “identifying information” in section 603.2(a)(1) of the Proposed Rule does not include credit card numbers or other account numbers. The Proposed Rule would define the term

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<sup>8</sup> FCRA § 605A(a)(1).

“identifying information” as “any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual.”<sup>9</sup> This definition also describes certain information that would qualify as “identifying information,” including name, social security number, driver’s license number and fingerprint. These examples are all traditional means used for identification, and we support their inclusion in the final rule.<sup>10</sup> We support these elements of the definition.

However, the Proposed Rule then goes on to include a “(C) unique electronic identification number, address, or routing code...” AFSA is concerned that, similar to the reference to attempted fraud in the definition of “identity theft,” this element of the definition of “identifying information” also could unnecessarily broaden the scope of identity theft. This definition determines the information that must be used in connection with a fraud in order for that fraud to qualify as identity theft under the FCRA. For example, the proposed definition of “identifying information” appears to transform instances of traditional credit card fraud, such as an individual purchasing goods or services with a stolen credit card number, into identity theft because a fraud would have been committed using another person’s identifying card number. We believe that a credit card is not intended as a means of identification standing alone, but only as a method of payment. Because of the extensive fraud procedures that financial institutions follow, a criminal cannot access a consumer’s credit card account using only the account number.

These processes are costly to CRAs as well as to users of credit reports. In addition, this broad definition, together with the broad definition of “identity theft,” and the ease of filing a “valid law enforcement report” will dramatically increase the number of false and fraudulent claims of identity theft and put a lot of pressure on furnishers to implement procedures to investigate and deal with this phenomenon. For these reasons, and the reasons discussed above in connection with attempted fraud, AFSA strongly urges the Commission to limit the definition of “identity theft” by clarifying that the term “identifying information” does not include credit card numbers or account numbers.

#### **4. The “Specificity” Requirement in Section 603.3(a)(1), and the Illustrative Examples Should be Revised to Prevent Misuse of Identity Theft Reports.**

The Proposed Rule generally requires that a consumer allege an identity theft “with as much specificity as the consumer can provide.”<sup>11</sup> The Proposed Rule provides examples of the “specificity” required.

AFSA agrees that a consumer should be required to provide all of the specific information available to the consumer when completing an identity theft report. AFSA is concerned, however, that the examples suggest that a consumer may not actually have to

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<sup>9</sup> 69 Fed. Reg. at 23,377.

<sup>10</sup> In fact, the Proposed Rule’s definition of “identifying information” is taken from a definition of “means of identification” found in a criminal provision of the U.S. Code concerning the fraudulent use of identification documents. *See* 18 U.S.C. § 1028(d)(4).

<sup>11</sup> Proposed Rule § 603.3(a)(1).

meet the statutory prerequisites for an identity theft report. AFSA believes the Commission’s guidance on this point should be unambiguous and, therefore, recommends a few revisions.

The Proposed Rule 603.3(a)(1) should be revised to make clear that a valid “identity theft report” “alleges *each element of an identity theft* with as much specificity as the consumer can provide.” (Emphasis added). The purpose of this additional language should also be made clear in the examples provided in section 603.3(b) where the Commission could provide examples of each of the following elements of identity theft that must be alleged to constitute an “identity theft” report:

- i. The commission of a fraud;
- ii. Using identifying information of another;
- iii. Without lawful authority.<sup>12</sup>

If users of consumer reports will be required to directly contact consumers for a period of 7 years as a result of an extended fraud alert that will follow receipt of an identity theft report, or if users will be deprived of potentially accurate credit information through an information block, then AFSA believes that the triggering identity theft report provided by consumers should include information supporting each element of the claimed identity theft. AFSA acknowledges that the Commission’s examples, provided in section 603.3(b), suggest that the three elements must be substantiated, but AFSA believes this requirement should be explicitly stated.

AFSA is also concerned that the example in section 603.3(b)(1) suggests that the mere “loss of personal information” is, by itself, an identity theft. This is inconsistent with the definition of “identity theft” and is contrary to FCRA section 605A(a) which requires the consumer’s “good faith suspicion” that the “consumer has been or is about to become a victim of fraud or related crime, including identity theft.” Although under certain circumstances, the “loss of personal information,” could support such a good faith suspicion, it is not, in and of itself, the offense of identity theft. AFSA, therefore, believes that section 603.3(b)(1) should be revised to remove “loss” as an example of specificity.

##### **5. The “Valid Law Enforcement Report” Provisions in Section 603.3(a) Should Be Revised to Avoid the Potential for Misuse of Reports That are not Authentic.**

The Proposed Rule requires that an “identity theft report” be “an official, valid report.”<sup>13</sup> AFSA supports this element of the definition and believes that, given the burdens imposed on consumer report users by the fraud alert provisions, the *official* nature of the identity theft report is essential to minimize those instances when consumers may misuse the fraud alert and identity theft protections to remove accurate, but negative, credit information from their CRA files.

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<sup>12</sup> Proposed Rule § 603.2(a).

<sup>13</sup> Proposed Rule § 603.3(a)(2).

The Commission's Supplementary Information states that, under FACTA's definition of identity theft report, which the Proposed Rule would expand upon, "a consumer could opt to use a copy of a complaint filed with the Commission's Clearinghouse as an "identity theft report" because such a copy would technically meet the statutory definition.<sup>14</sup> AFSA disagrees.

The Commission's own website makes clear that the complaint could be filed with the Clearinghouse anonymously.<sup>15</sup> Moreover, the Commission concedes that its complaint system "is not designed to vouch for the truth of each individual complaint."<sup>16</sup> The Commission's Clearinghouse is simply designed to provide a central collection point for identity theft data. While Commission staff may consider the information for the purposes of evaluating identity theft trends and may, under certain circumstances, refer the information to law enforcement officials, there appear to be no established procedures for any Commission official to authenticate the information submitted in such a complaint. The consumer is given complete discretion in terms of how much information, including identifying information, the consumer wishes to provide.

The Commission's suggestion that a consumer's complaint filed with the Clearinghouse would technically meet the statutory definition of an "identity theft report" is also at odds with the instructions to consumers at the Commission's website. The Commission actually recommends that consumers file *both* a police report *and* a complaint with the Clearinghouse. Moreover, nothing on the Commission's website alerts the consumer to the possibility that the consumer will be subject to criminal penalties for providing false information in a filed complaint. To address these concerns, the revised Final Rule should:

- a. Make clear that a complaint filed with the Clearinghouse is not an "identity theft report;"
- b. Provide examples of what constitutes "an official, valid report" filed with "a Federal, State or local law enforcement agency, including the United States Postal Inspection Service, or such other government agency; and
- c. Explicitly permit data furnishers to require a fraud affidavit in form and content similar to that found on the Commission's website.

In addition to AFSA's concerns on the use of the Clearinghouse as a source for an official identity theft report, AFSA is also concerned that the expanded definition of "valid law enforcement report" will increase the likelihood that a consumer will request an information block not because he is the victim of identity theft, but because he is attempting to clear up his credit file. In order to emphasize the official nature of an identity theft report, AFSA recommends that the Final Rule be revised to provide that

<sup>14</sup> See, 69 Fed. Reg. 23,372, n. 9.

<sup>15</sup> See, [http://www.consumer.gov/idtheft/filing\\_complaintwftc.html](http://www.consumer.gov/idtheft/filing_complaintwftc.html).

<sup>16</sup> 69 Fed. Reg. 23,372, n. 9.

only reports obtained from law enforcement agencies with arrest authority will qualify as valid law enforcement reports.

**6. The Illustrative Examples Should Be Revised to Make Clear When a Furnisher May Request Additional Information to Verify the Validity of an Official Law Enforcement Report.**

Proposed Rule 603.3(a)(3) permits a furnisher of information to request additional information in order to determine “the validity of the alleged identity theft.” AFSA supports this element of the definition of identity theft report.

An information furnisher should be permitted to require the consumer to provide additional information to confirm the validity of an identity theft report. Such a request could be part of an investigation following the notification of an information block from a CRA, or as part of an investigation following direct receipt of an identity theft report from a consumer. Some of the Commission’s examples of those instances in which an information furnisher may request additional information may be read to suggest a more limited ability on the part of a furnisher to seek verification of the identity theft.

Because identity theft reports can result in the blocking or non-reporting of otherwise accurate, negative information, it is critical that, in appropriate circumstances, the CRAs and furnishers be permitted reasonable discretion to seek additional information relating to the alleged identity theft. The Proposed Rule contains five examples that are intended to help explain when it would be reasonable for a CRA or furnisher to seek additional information from the consumer in addition to the law enforcement agency report. In providing the five examples, the Commission emphasizes that these examples are provided only for “illustrative purposes.”<sup>17</sup>

AFSA appreciates the Commission’s effort to balance the need of the recipient of the identity theft report against the inconvenience a consumer might experience if required to provide additional information. AFSA is concerned, however, that the examples could be read to mean that requests for additional information are unreasonable even when specific circumstances indicate that particular identity theft reports may be unreliable. AFSA believes that such a limitation is inconsistent with FCRA § 609(e), which permits a business entity to require both a police report and a properly completed affidavit in order to verify information from consumers in similar circumstances.<sup>18</sup>

**Example number 1; Proposed Rule 603.3(c)(1).**

The first example precludes a furnisher from requesting additional information if the identity theft report takes the form of a law enforcement report that includes details about the identity of the officer taking the report, unless there is “an indication that the report was obtained fraudulently” or another identifiable concern.<sup>19</sup>

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<sup>17</sup> Proposed Rule § 603.3(c).

<sup>18</sup> 15 U.S.C. § 1681g(e).

<sup>19</sup> Proposed Rule § 603.3(c)(1).

Based upon member-provided information, AFSA believes that a significant percentage of law enforcement reports claiming identity theft are false or fraudulent, even when consumers are required to make these assertions directly to law enforcement officials. Some members also report receiving police reports with the same report number, suggesting that copies of the same report are being circulated and then completed by different persons. AFSA believes that credit repair clinics may be encouraging consumers to file such reports in order to block accurate, but negative, information in an effort to enhance a consumer's creditworthiness.

To respond to suspicious reports, even those containing the signature, badge number or other identification of a law enforcement official, information furnishers should be permitted to request additional information or documentation. In addition, the example should be revised to make clear that it is reasonable for a furnisher to seek additional information from the consumer when there is an indication that a report was fraudulently *created or altered*, not just when a report is fraudulently *obtained* as currently provided in example one.

Further, because identity theft reports may not provide information connecting the alleged identity theft with the information the consumer seeks to block, furnishers and CRAs should be permitted to request information connecting the alleged identity theft to the specific information that will be blocked if the report is valid.

**Examples numbered 2-3; Proposed Rule 603.3(c)(2)-(3).**

AFSA agrees with examples two and three affecting information furnishers provided in Proposed Rule § 603.3(c)(2)-(3).

**Example number 4; Proposed Rule 603.3(c)(4).**

Example four indicates that a consumer may obtain an *extended* fraud alert by merely providing a “law enforcement report generated by an automated system with a simple allegation that an identity theft occurred.”<sup>20</sup> According to the Commission, in such a case it would not be reasonable for a CRA to require additional documentation or information such as a notarized affidavit.<sup>21</sup>

AFSA appreciates the distinction made by the Commission between those instances when a tradeline block is sought, as in example three,<sup>22</sup> and those instances when a consumer seeks a fraud alert. AFSA also understand that example four is directed toward CRAs and not toward furnishers. However, to the extent that this example may be read to impact furnishers, AFSA questions whether a simple allegation submitted on the Commission's Clearinghouse complaint form would constitute a “law enforcement report generated by an automated system with a simple allegation that an identity theft

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<sup>20</sup> Proposed Rule § 603.3(c)(4).

<sup>21</sup> *Id.*

<sup>22</sup> Proposed Rule § 603.3(c)(3).

occurred.” AFSA believes that this outcome is not supported by FACTA, which requires an “identity theft report”<sup>23</sup> that the Commission has defined as being an “official, valid report” that subjects the consumer to criminal penalties for filing false information.<sup>24</sup> The example should be revised to make clear that a “simple allegation” is insufficient unless supported by the indicia of reliability specified by the Commission in Proposed Rule 603.3(a).

**Example number 5; Proposed Rule 603.3(c)(5).**

As currently drafted, example five provides that furnishers are not permitted to obtain additional information from consumers relating to the alleged identity theft if the law enforcement report provided by the consumer contains the information sought by the furnisher.<sup>25</sup>

AFSA believes this prohibition fails to consider those instances where a document purporting to be a law enforcement report may have been obtained by the consumer from other sources (e.g., credit repair clinics, the internet, forms providers, etc.). In such circumstances, a consumer may provide the furnisher with a report that contains a written representation that the consumer is subject to criminal penalties, but the report may never have actually been filed with a law enforcement agency. Moreover, some police reports from some jurisdictions may not contain any statement relating to the consumer’s criminal liability for the filing of a false report. In other words, there may be many reasons why an information furnisher would want to require a notarized form or other means of authenticating the consumer’s representations. This example should be clarified to permit a furnisher to seek additional information in the form of an affidavit, such as the Commission’s form of affidavit or similar form,<sup>26</sup> when the furnisher reasonably needs that additional information in order for the report to constitute an “identity theft report” as defined in Proposed Rule 603.3(a).

Furnishers ask for nothing more than to be able to ensure that the information provided by consumers as part of an identity theft report is reliable. AFSA’s requested revision would provide this assurance while imposing only a minimal additional burden upon consumers, a burden that the Commission itself has adopted on its own website.

**7. The Final Rule Should Provide Furnishers with Broader Authority to Request Additional Information or Documentation to Prevent Misuse of Identity Theft Reports.**

With respect to all verification requests by an information furnisher, the Proposed Rule requires that the request be made within 5 business days of receipt of an identity theft report.<sup>27</sup> AFSA submits that a furnisher’s investigation may involve more than a

<sup>23</sup> FCRA § 605A(b)(1); 15 U.S.C. § 1681c-1(b)(1).

<sup>24</sup> Proposed Rule § 603.3(a)(2).

<sup>25</sup> Proposed Rule § 603.3(c)(5).

<sup>26</sup> See, <http://www.ftc.gov/bcp/online/pubs/credit/affidavit.pdf>.

<sup>27</sup> Proposed Rule § 603.3(a)(3).

single one-time request for information. Even though the victim is required to file an identity theft report “with as much specificity as the consumer can provide,” there will usually be a need to request additional information in order to investigate such report. AFSA believes the Proposed Rule should be revised to provide that if the furnisher still has grounds to request additional information or documentation after the initial request, the furnisher may make the request under the same rules that apply to the first request. If this revision is not made, a consumer may intentionally give insufficient information, knowing that the furnisher will only have one chance to get the truth. Of course, the consumer is less likely to be prosecuted for ambiguous or incomplete identity theft reports than for false reports.

Proposed Rule 603.3(c) also raises this concern. In the first example of reasonable grounds to request additional information, under section 603.3(c), it may often be difficult for the furnisher to demonstrate there is “an indication that the report was obtained fraudulently;” indeed, the reason to ask for additional information could be because AFSA’s members’ experience demonstrates that similar claims in the past have proven to be fraudulent. AFSA believes the Proposed Rule should be revised to provide furnishers with more flexibility than is permissible under the example cited above; for example, using language in the Final Rule such as “an identifiable concern, or reasonable expectation that the report was obtained fraudulently.”

## **8. AFSA Supports the Duration of Active Duty Alerts.**

AFSA members will have to respond to active duty alerts in the same manner as they would to initial fraud alerts by refraining from: establishing a new credit plan; extending credit; issuing an additional card on an existing account; or granting any increase in credit limit unless the members utilize reasonable policies and procedures to form a reasonable belief that the user knows the identity of the person making the request.<sup>28</sup>

AFSA supports the 12-month duration for active duty alerts. FACTA amended the FCRA to protect active duty service members and reservists called to duty when they are assigned to service away from their regular duty station. These service members or their personal representatives may place “active duty alerts” in the CRA files. FACTA provides that such an alert shall be in effect for 12 months, unless the Commission by regulation provides for a longer period. The Commission proposes to limit the duration of the active duty alerts to 12 months. AFSA supports this time period. If a service member is posted away from the regular duty station for a period longer than 12 months, the service member, or the service member’s representative, can renew the alert at the end of the 12-month period.

## **9. AFSA’s Observations on Appropriate Proof of Identity.**

AFSA has no specific comments on the proposed rule with respect to “appropriate proof of identity” for purposes of FCRA sections 605A, 605B and 609(a)(1)(A), as

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<sup>28</sup> FCRA § 605A(h)(1)(B); 15 U.S.C. § 1681c-1(h)(1)(B).

AFSA notes that those provisions apply only to CRA's and only to those entities' obligations under those sections, and not under any other FCRA provision. AFSA suggests, however, that the final rule should make clear the limited scope of those provisions. AFSA also suggests that the Commission's Supplementary Information to the final rule explain the appropriate measures by a consumer report user when a consumer's file at a consumer reporting agency contains a fraud alert or an extended alert. In particular, AFSA suggests that the Supplementary Information explain that, in the case of a retail installment sales contract, the assignee may rely on the measures taken by the original creditor to comply with the user's obligations under FCRA sections 605A(h)(1)(B) and (2)(B) with respect to verifying the consumer's identity.

### **Conclusion**

Because "identity theft" and "identity theft report" are critical terms to the implementation of the fraud alerts and the blocking of consumer information under FCRA sections 605A and 605B, AFSA hopes that due consideration will be given to its comments as the trade association representing hundreds of creditors who extend credit and loans to millions of American consumers based upon the accuracy and completeness of the information contained in consumer reports.

AFSA appreciates the opportunity to comment on this proposed rule, and would be pleased to meet with the Commission's staff at any time to discuss the above-identified concerns and recommendations.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert E. McKew", with a long horizontal flourish extending to the right.

Robert E. McKew  
Senior Vice President and General Counsel  
American Financial Services Association